Supreme Court U. S.
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DEC. 9 1902
JAMES H. McKENNEY
Clerk

No. 61.

Motion for Leave to intervene.

Filed Dec. 9, 1902.

In the Supreme Court of the United States.

OCTOBER TERM, 1902.

NORTHERN PACIFIC RAILWAY COMPANY, appellant,
v.
J. A. SODERBERG.

No. 61.

APPEAL FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT.

MOTION ON BEHALF OF THE UNITED STATES FOR LEAVE TO INTERVENE.

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NORTHERN PACIFIC RAILWAY COMPANY, appellant, *v.* J. A. SODERBERG. } No. 61.

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MOTION ON BEHALF OF THE UNITED STATES FOR LEAVE TO INTERVENE.

The United States moves the court for leave to intervene in the above-entitled cause and to participate in argument therein, and in support of this motion respectfully shows unto the court that the controlling question of law presented in the case is the true interpretation of the word "*mineral*" in that portion of the Northern Pacific land grant (13 Stat., 365) whereby certain public lands "not mineral" are granted to the Northern Pacific Railroad Company, and wherein the following provision upon that subject occurs: "*Provided further*, That all mineral lands be, and the same are hereby, excluded from the operations of this act, and in lieu

thereof a like quantity of unoccupied and unappropriated agricultural lands, in odd-numbered sections, nearest to the line of said road may be selected as above provided: *And provided further*, That the word 'mineral,' when it occurs in this act, shall not be held to include iron or coal."

A large portion of the Northern Pacific land grant, viz, more than 1,000,000 acres, remains unsurveyed and a still larger portion remains unadjusted; that is, it is still undetermined as to whether specific sections are of the character and class of lands which pass under the grant or are excluded therefrom. The question, therefore, of what lands are excluded from the grant as being mineral in character is one in which the United States is directly concerned, in that it affects the quantity and character of lands which will remain to the United States to be disposed of under the mining laws within a strip 120 miles in width throughout the primary limits and first and second indemnity belts in North Dakota, Montana, Idaho, Washington, and Oregon; and in that it affects the land department in the administration and adjustment of this railroad land grant.

The particular substance, the character of which, whether mineral or nonmineral, is in controversy in this cause, is granite; but the principle by which it will be determined, whether granite of a good merchantable quality, giving controlling value to the land in which it is found, excludes such land from this land grant, is equally applicable to alum, asphaltum, borax,

marble, mica, carbonate and nitrate of soda, petroleum, graphite, etc.

The exception or exclusion of mineral lands found in this land grant is also found in the same or in similar language in the grants to the Union Pacific Railroad Company, the Central Pacific Railroad Company, the Southern Pacific Railroad Company, the Atlantic and Pacific Railroad Company, the Oregon and California Railroad Company, and to other railroad companies having similar land grants.

The question presented is therefore one of general public interest, in the solution of which the United States is necessarily greatly interested.

JOHN K. RICHARDS,
Solicitor-General.
WILLIS VAN DEVANTER,
Assistant Attorney-General.

DECEMBER 8, 1902.

Service of the foregoing motion is hereby waived.

C. W. BUNN,
Attorney for Appellant
R. A. BALLINGER,
Attorney for Appellee

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